

U.S. Department of Labor

Occupational Safety and Health Administration
Wichita Area Office
271 W. Third St. N., Suite 400
Wichita, KS 67202
Telephone Nr: 316-269-6644
Kansas Toll Free Nr: 1-800-362-2896
Fax Nr: 316-269-6185



Reply to the Attention of: Judy A. Freeman
Area Director

May 23, 2013

Muckrock News
DEPT MR 2917
P.O. Box 55819
Boston, MA 02205-5819

RE: OSHA Inspections for the Bartlett Grain Elevator located in Atchison, KS FOIA #719243

Dear Mr. Morisy:

Your request for a copy of our investigatory file was received by this office on May 20, 2013. This is to advise you that at this time I am denying your request since it pertains to an ongoing investigation being conducted by this office. Particularly, Inspection number 316034081.

Fatality investigations may take up to six months to issue citations. If citations are issued, the employer has 15-working days to accept the citations, request an informal conference for modifications to the citations, or contest any or all of the citations. Copies of citations are available after the employer's receipt. If the employer contests the citation, disclosure is withheld until a final order has been issued. You may call for disclosure availability.

Enclosed are copies of citation(s) issued. Until such time as our investigation is completed and all litigation or potential litigation has been concluded and the citation(s) have become a final order of the Occupational Safety and Health Review Commission, all documents and investigative materials are subject to exemption from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(7)(a), which recognizes the need for preserving the position of the Government in litigation or potential litigation in accordance with the rules governing discovery in cases before the court and administrative agencies. A description of the FOIA exemptions is enclosed.

For your convenience, you can check all OSHA inspections by accessing the OSHA public website at <http://www.osha.gov>. The following steps are directions on navigating the website:

- Click the "Data & Statistics" tab
- Under "Inspection Data", click on "Establishment Search"
- Type in the company name or part of the company name
 - Narrow the search by selecting Wichita in the "OSHA Office" drop down box

- Narrow the search by selecting a timeframe
- Click "Submit"
- Each Inspection number appears as a link which can be accessed.

Failure to mention any additional exemption which may be applicable to the items withheld shall not constitute a waiver of such exemptions.

You may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statement or arguments. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal should include a copy of your initial request and a copy of this letter. The appeal must be addressed to:

Solicitor of Labor, U.S. Department of Labor, Rm. N-2428, 200 Constitution Avenue, N.W., Washington, D.C. 20210. If mailed, both the envelope, and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal."

If we can be of further assistance, please let us hear from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Judy A. Freeman", with a stylized flourish at the end.

Judy A. Freeman
Area Director

Enclosure(s)

ATTACHMENT #1

5 U.S.C. 552(b) This section does not apply to matters that are --

- (2) Related solely to the internal personnel rules and practices of an agency;
- (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Records or information compiled by law enforcement purposes, but only to the extent that the production of such law enforcement records of information:
 - (A) Could reasonably be expected to interfere with enforcement proceedings,
 - (B) Would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) Could reasonably be expected to disclose the identity of a confidential source, including State, Local or foreign agency or authority of any private institution which furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
 - (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigation or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
 - (F) Could reasonably be expected to endanger the life or physical safety of any individual.

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Wichita, KS 67202
Phone: (316)269-6644 FAX: (316) 269-6185



Citation and Notification of Penalty

To:
Kansas Grain Inspection Services, Inc
and its successors
P.O. Box 750077
Topeka, KS 66675

Inspection Number: 316034081
Inspection Date(s): 10/30/2011-12/14/2011
Issuance Date: 04/12/2012

Inspection Site:
324 Riverfront Rd.
Atchison, KS 66002

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be

submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

Penalty Payment - Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the OSHA office issuing the citation and identified above. The certification must be sent by you within 10 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citations states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to OSHA, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

Judy A. Freeman, Area Director
U.S. Department of Labor - OSHA
Suite 400
271 W. Third St. N.
Wichita, KS 67202
Phone: (316)269-6644

Kansas Grain Inspection Services, Inc
P.O. Box 750077
Topeka, KS 66675

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

A



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 04/12/2012. The conference will be held at the OSHA office located at Suite 400, 271 W. Third St. N., Wichita, KS, 67202 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Kansas Grain Inspection Services, Inc
Inspection Site: 324 Riverfront Rd., Atchison, KS 66002

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written Hazard Communication Program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

The employer had not developed a written Hazard Communication Program for employees using and exposed to chemicals while working in the in-house laboratory and at on-site laboratories at the elevator and mill customer locations. Employees were exposed to the chemicals used by themselves when performing grain tests and to the chemicals at the customer locations. Employees were exposed to illness and injury from exposure to chemicals including but not limited to methanol, potassium hydroxide, grain dust, and fumigants.

29 CFR 1903.19(d)(1) requires certification and documentation that the abatement of the above violation is completed.

Date By Which Violation Must be Abated:	05/14/2012
Proposed Penalty:	\$ 4500.00



Citation and Notification of Penalty

Company Name: Kansas Grain Inspection Services, Inc
Inspection Site: 324 Riverfront Rd., Atchison, KS 66002

Citation 2 Item 1 Type of Violation: **Willful**

29 CFR 1910.132(d)(1)(i): Where hazards were present which necessitate the use of personal protective equipment (PPE), the employer did not select, and have each employee use, the type of PPE that will protect the affected employee from the hazards:

On or about October 27, 2011, at the Bartlett Grain Company, LP, Atchison River Terminal located at 324 Riverfront Rd., Atchison, KS, employees were exposed to fall hazards while walking/working on top of railcars, located on the track nearest to the elevator structure, performing stowage examinations without the use of fall protection. Employees were exposed to a fall of approximately fifteen (15) feet from the railroad cars.

29 CFR 1903.19(d)(1) requires certification and documentation that the abatement of the above violation is completed.

Date By Which Violation Must be Abated:	05/07/2012
Proposed Penalty:	\$ 63000.00



Citation and Notification of Penalty

Company Name: Kansas Grain Inspection Services, Inc
Inspection Site: 324 Riverfront Rd., Atchison, KS 66002

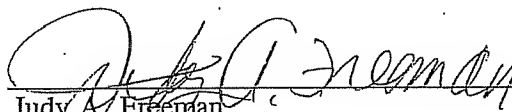
Citation 3 Item 1 Type of Violation: **Other**

29 CFR 1910.134(k)(6): The employer did not provide the basic advisory information on respirators, as presented in Appendix D of this section, to employees who voluntarily wear respirators:

The employer had not provided the basic advisory information as presented in Appendix D of 29 CFR 1910.134 to employees voluntarily wearing the 3M 8210 filtering facepieces.

29 CFR 1903.19(c)(1) requires certification that the abatement of the above violation is completed.

Date By Which Violation Must be Abated:	05/14/2012
Proposed Penalty:	\$ 0.00



Judy A. Freeman
Area Director

U.S. Department of Labor

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Phone: (316)269-6644 FAX: (316)269-6185
Kansas Toll Free 1-800-362-2896



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Kansas Grain Inspection Services, Inc
Inspection Site: 324 Riverfront Rd., Atchison, KS 66002
Issuance Date: 04/12/2012

Summary of Penalties for Inspection Number 316034081

Citation 1, Serious	= \$	4500.00
Citation 2, Willful	= \$	63000.00
Citation 3, Other	= \$	0.00
TOTAL PROPOSED PENALTIES	= \$	67500.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to:

"DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions put on any check or money order for less than full amount due and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

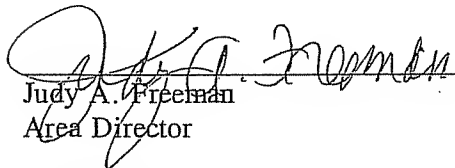
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest. Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is 1%. Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review

Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges. A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs. Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.


Judy A. Freeman
Area Director

04.12.2012
Date

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Citation and Notification of Penalty.

If the hazards itemized on this citation(s) are not abated/corrected and a follow-up inspection is conducted, your establishment may receive a Failure to Abate Citation for the uncorrected hazards with subsequent additional monetary penalties of up to thirty (30) times the original penalty amount of the uncorrected hazards.

A work sheet has been provided to assist in providing the required abatement information. A completed copy of this work sheet should be posted at the worksite with the Citation(s).